

REMARKS

The present amendments and remarks are responsive to a Final Office Action mailed December 15, 2005, where the Examiner has rejected claims 1-18. Herein, applicant has amended independent claims 1 and 11. Reconsideration and allowance of pending claims 1-18 is respectfully requested in view of the following remarks.

The Examiner is respectfully requested to enter the amendments to claims 1 and 11 as these amendments are believed to bring the claims into a form for allowance. Alternatively, the presented amendments place the claims in better condition for appeal. As more fully discussed below, the amendments to claims 1 and 11 simply add limitations previously presented in claim 10. Accordingly, no new issues can be raised by the current proposed amendment.

A. The Examiner Did Not Fully Consider Amendments to Claim 10, so the Finality of the Action Should be Withdrawn, and a new Action Issued

In its Response to the June 23, 2005 Office Action, the applicant amended claim 10 as duplicated below:

10. *A method for optimal Short Message Service (SMS) encoding in a wireless communications device having SMS capabilities, the method comprising:*
evaluating a wireless device resource encoding requirement for an SMS message in the wireless device;
identifying a plurality of encoding formats available in the wireless device and usable for encoding the SMS message responsive to the evaluation;
determining the number of bits needed to represent characters in the usable formats;
determining a memory usage requirement of the SMS message without encoding the SMS message;
selecting the encoding format that encodes the SMS message with a minimum memory usage as the optimal encoding format, the selection being made responsive to determining the memory usage;
encoding the SMS message in response to selecting the optimal encoding format; and,
storing the encoded SMS message in wireless device memory.

These amendments expressly set out important limitations, and were intended to clarify the claimed invention for the Examiner. The applicant believed that the amendments to claim 10 distinguished claim 10 from the cited references, and respectfully submit that claim 10 should have been allowable. In the alternative, the applicants believed that the amendments would further the discussion with the Examiner to more precisely identify allowable subject matter. However, in the Final Office Action, the Examiner did not address any of these amendments to claim 10, and instead merely repeated the rejections from the previous office action.

The applicant is entitled to a full and fair consideration of its application by the Examiner, and, this process is intended to develop "a clear issue ... between the examiner and the applicant". MPEP §706.07 (and see below).

The examiner should never lose sight of the fact that in every case the applicant is entitled to a full and fair hearing, and that a clear issue between applicant and examiner should be developed, if possible, before appeal. §706.07

The Applicant respectfully requests that the Examiner withdraw the current Final Office Action, and provide a new Action that addresses the amendment to claim 10 presented in the Response to the June 23, 2005 office action, or otherwise issue a notice of allowance directed to claim 1-18.

B. Not all Claim Limitations are found in the Cited References

In the final office action, the Examiner "totally disagrees" with the applicant's arguments, and repeats a list of 3 specific items that the Examiner has found in the cited references. However, this list does not address any of the limitations added to amended claim 10, and as discussed below, the cited reference do not disclose these limitations. If the Examiner believes that the added limitations are found in the references, then the applicant requests that the Examiner specifically provide citations to relevant passages of the cited references identifying how the cited references show the claimed limitation. In

this way, prosecution of this application can be advanced by clearly identifying an issue for appeal.

Further, the Examiner did not address any of the ordering deficiencies of the references shown by the applicant. In the Response to the June 23, 2005 office action, the applicant shows the importance of ORDERING in at least the following discussions:

1. page 7 , line 22 to page 9, line 3 (about 42 lines of ordering discussion)
2. page 9, lines 19 to 28 (about 10 lines of ordering discussion)
3. page 11, lines 11 to 27 (about 16 lines of ordering discussion)

Thus, in just about 6 pages of Remarks, the applicant has provided at least 68 lines (almost 3 pages in the aggregate) of argument that distinguish the claimed invention based on the claimed ordering process. Significantly, the Examiner did not respond to the ordering discussion, except to state that “the argument filed 09/15/2005 has been fully considered but they are not persuasive”. More importantly, the Examiner does not make any citation to any reference that shows the claimed ordering. Of course, if the Examiner believes that the claimed ordering may be found in the references, then the applicant requests that the Examiner specifically provide citations to relevant passages of the cited references identifying how the cited references show the claimed limitation. In this way, prosecution of this application can be advanced by clearly identifying an issue for appeal.

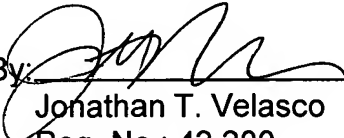
Although the applicant believes that claims 1 and 11 are allowable as originally filed, to speed prosecution, the applicant has proposed amending claims 1 and 11 to further illuminate the claimed ordering. Claim 1 has been proposed to be amended to make express that “the selection being made without encoding the SMS message”, and claim 11 has been proposed to be amended to make express that “the optimizing signal is generated without encoding the SMS message”. Both of these amendments are similar to the amendment made previously to claim 10, so no new issues are raised.

C. Conclusion

The applicant believes the pending claims are patentably distinguishable over the cited references of record. For all the foregoing reasons, an early allowance of claims 1-18 pending in the present application is respectfully requested.

Respectfully submitted,

Dated: MAR 15, 2006

By: 
Jonathan T. Velasco
Reg. No.: 42,200

Jonathan T. Velasco
Kyocera Wireless Corp.
Attn: Patent Department
P.O. Box 928289
San Diego, California 92192-8289
Tel: (858) 882-3501
Fax: (858) 882-2485